



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/170235

PRELIMINARY RECITALS

Pursuant to a petition filed November 20, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 14, 2015, at Chippewa Falls, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for a power wheelchair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Chippewa County.
2. On September 15, 2015, the petitioner with [REDACTED] requested a power wheelchair and accessories at cost of \$15,273.60. The Office of Inspector General denied the request on October

13, 2015, after determining it lacked adequate information to determine if the chair is medically necessary.

3. The petitioner is a 44-year-old woman diagnosed with cerebral palsy. She requires a power wheelchair to move about.
4. The petitioner currently has two power wheelchairs, one 10 years old and the other five.
5. The newer chair has a power-tilt option that was added to help her with her back pain. The wheels on that chair have gotten stuck since it was two months old when she goes over a bump or is on an incline. In addition, she falls out of it, even with a seatbelt on, unless the incline is tilted all the way back, which prevents her from performing her tasks at her job.
6. The petitioner has been using her older chair, but this one is worn out and needs extensive repair.
7. The petitioner has tried a less expensive version of the chair she requests. She can operate it, but the seat does not fit her.

DISCUSSION

The petitioner requests a power wheelchair to replace the two she now has that she contends do not meet her needs. She is a 44-year-old woman with cerebral palsy who is employed despite her disability. Power wheelchairs are a type of durable medical equipment that must be authorized by the Office of Inspector General before the medical assistance program will pay for it. *See* Wis. Admin. Code § DHS 107.24. When determining whether a service is necessary, the Division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

The petitioner received a power wheelchair with a power-tilt option five years ago. This replaced another power wheelchair she received 10 years ago. The newer chair has never worked well for her. A couple months after she got it, its wheels started locking up whenever she went over a bump or was on an incline. Despite wearing a seatbelt, she has fallen out of it. The power-tilt feature has exacerbated this

problem because it causes her to slide forward. The only way she can prevent this is to position herself all the way back, but this prevents her from performing her tasks at work. She has begun using her 10-year-old chair again, but this is not viable because the chair is worn out and needs thousands of dollars' worth or repairs. She has not tried out the requested wheelchair. But she testified that she has tried the next less expensive model, and it meets her needs, except that the seat does not fit her.

The Office of Inspector General indicated that the purchase of a new chair may be "reasonable" but is concerned because there is no documentation that the petitioner was wearing a seat belt when she fell out of her current chair, there is no medical diagnosis that she no longer needs the power-tilt option, it appears that she is eligible for Medicare, and it does not appear that she has conducted a trial of the requested chair.

The petitioner addressed much of this. As mentioned, she was wearing a seatbelt. Besides pointing out that she cannot work with the power-tilt option, she testified that all she needs is elevator leg rests. She contends that the power-tilt actually makes her back pain worse. She has tried a similar chair, but not the model she actually requests. (The Office of Inspector General did not explain how her potential Medicare eligibility affects this request.)

This is a close case, but the petitioner has not met her burden of proving by the preponderance of the credible evidence that the requested chair will meet her needs. Given that she received an expensive power-tilt option that she now contends hinders rather than helps her function, she must provide actual medical documentation showing what her needs are and proof in the form of a suitable trial of the requested chair that it will meet those needs. I suggest she submit a new request with this information. If it is denied, she can file a new appeal.

CONCLUSIONS OF LAW

There is not enough evidence to determine whether the requested wheelchair is medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

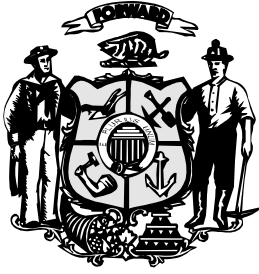
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of January, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 29, 2016.

Division of Health Care Access and Accountability